

AN ORDINANCE TO AMEND THE TOWN CODE BY ADDING A NEW ARTICLE VII, SECTIONS 18-700 THROUGH 18-709, CHAPTER 18, AND ESTABLISHING A STORMWATER UTILITY AND A SYSTEM OF STORMWATER UTILITY FEES

WHEREAS, during the past several years, town council and town staff have periodically held briefings and discussions about the need for increased maintenance of the town's stormwater infrastructure and the necessity of complying with emerging federal and state environmental and stormwater regulations;

WHEREAS, town council established the Blacksburg Stormwater Stakeholders Advisory Group in 2012 to evaluate a proposed stormwater utility, including a possible stormwater utility fee structure;

WHEREAS, the Advisory Group, which was comprised of representatives from the local engineering community, local government, non-profits, and the business community, studied the issues for over a year (August 2012 through November 2013);

WHEREAS, the Advisory Group recommended to the town council that a stormwater management program should be established;

WHEREAS, the Advisory Group also developed recommendations for a rate structure and the implementation of stormwater charges to fund the costs of complying with greater federal and state regulation, which the town council and town staff reviewed and studied in developing this ordinance;

WHEREAS, the town council finds that the proposed stormwater charges developed by the Advisory Group, and as modified as set forth in this ordinance, are based on an analysis that demonstrates a rational relationship between the amounts charged and the benefits received; and

WHEREAS, in addition to extensive public outreach conducted by the Advisory Group, the council held a public hearing in accordance with Virginia Code § 15.2-2114 (B), at which public hearing citizens were afforded the opportunity to present their opinions and views in support of or in opposition to the proposed stormwater utility.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Blacksburg:

1. That Chapter 18 of the Town Code is amended and reordained by the addition of new Article VII, as follows:

***Sec. 18-700. Authority.***

*The town is authorized by Virginia Code § 15.2-2114 to enact a system of utility fees to support a local stormwater management program consistent with the Virginia Stormwater Management Act (Virginia Code § 10.1-603.1, et seq.) and all other state or federal regulations governing stormwater management.*

***Sec. 18-701. Findings and purpose.***

*The town council finds that an adequate, sustainable source of revenue for stormwater management activities is necessary to protect the general health, safety, and welfare of the residents of the town. Further, the council finds that property with higher amounts of impervious area contributes greater amounts of stormwater and pollutants to the stormwater management system and waters of the Commonwealth and should carry a proportionate burden of the cost. However, stormwater runoff is associated with all improved properties in the town, whether residential or nonresidential, and the individual property impacts of runoff are correlated to the amount of impervious surface on the property and land-disturbing activities on the property. The elements of stormwater management infrastructure provide benefits and services to properties within the town through direct protection of property, control of flooding and protection of the town's natural environment. Therefore, the council determines that it is in the best interests of the public to establish a stormwater management utility and stormwater utility fees that allocate program costs to all property owners based on impervious area.*

***Sec. 18-702. Definitions.***

*The following words and terms used in this article shall have the following meanings:*

*"Agricultural property" means undeveloped property used for the tilling, planting or harvesting of agricultural, horticultural or forest crops or land used for raising livestock.*

*"Developed property" means real property that has been altered from its natural state by the addition of improvements such as buildings, structures, and other impervious surfaces. For*

*new construction, property shall be considered developed pursuant to this section upon (a) issuance of a certificate of occupancy or (b) certification of the final building permit inspection for those facilities not requiring a certificate of occupancy.*

*“Developed residential property” means a developed lot or parcel containing at least one (1) but no more than four (4) residences or dwelling units, and accessory uses related to but subordinate to the purpose of providing permanent dwelling facilities. Such property may include, but is not limited to, houses, duplexes, triplexes, quadruplexes, townhouses and mobile homes.*

*“Developed multifamily residential property” means developed property containing more than four (4) residences or dwelling units, and accessory uses related to but subordinate to the purpose of providing permanent dwelling facilities. Such property may include, but is not limited to, apartments and condominiums.*

*“Developed nonresidential property” means developed property that does not serve a primary purpose of providing permanent dwelling units. Such property shall include, but is not limited to, commercial properties, industrial properties, parking lots, recreational and cultural facilities, hotels, offices and churches.*

*“Impervious surface area” means a surface that is compacted or covered with material that is highly resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, parking lots, and other similar structures.*

*“Revenues” means all rates, fees, assessments, rentals or other charges or other income received by the stormwater management utility pursuant to this article in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the town, funds provided by developers or individual residents, and the proceeds from sale of general obligation bonds for stormwater projects or stormwater revenue bonds.*

*“SBU rate” means the amount charged for a stormwater billing unit.*

*“Stormwater billing unit” or “SBU” means the equivalent impervious area of a single-family residential developed property per dwelling unit located within the town based on the statistical average horizontal impervious area of a single-family residence in the town. A billing unit (BU) equals three thousand three hundred (3,300) square feet of impervious surface area.*

*“Stormwater management system” or “system” means the stormwater management infrastructure and equipment of the town and all improvements thereto for stormwater control in the town. Infrastructure and equipment shall include structural and natural stormwater control systems of all types, including, without limitation, retention basins, sewers, conduits, pipelines, pumping and ventilation stations, and other plants, structures, and real and personal property used for support of the system. The system does not include private drainage systems.*

*“Stormwater management utility” or “utility” means the system of stormwater utility fees and the enterprise fund created by this article to maintain and operate the town’s stormwater management system.*

*“Stormwater utility fee” means the monthly utility charges based upon the SBU rate applied and billed to property owners or occupants of developed residential property, developed multifamily residential property, developed nonresidential property and other property, all as more fully described in section 18-704.*

*“Undeveloped property” means any parcel which has not been altered from its natural state to disturb or alter the topography or soils on the property in a manner which substantially reduces the rate of infiltration of stormwater into the earth.*

***Sec. 18-703. Establishment of stormwater management utility; stormwater utility fee.***

*(a) The stormwater management utility is hereby established to provide for the general health, safety and welfare of the town and its residents.*

*(b) A stormwater utility fee is hereby imposed on every parcel of developed real property in the town that appears on the real property assessment rolls as of December 31 of each year. All stormwater utility fees and other income from the charges shall be deposited into the stormwater management enterprise fund.*

*(c) The SBU rate to be used for calculating the stormwater utility fee shall be six (6) dollars (\$6.00) per month.*

*(d) Except as otherwise provided in this article, the impervious area for a property shall be determined by the town using aerial photography, as-built drawings, final approved site plans, field surveys or other appropriate engineering and mapping analysis tools.*

*(e) Notwithstanding subsection (b) above, and consistent with Virginia Code § 15.2-2114, the stormwater utility fee shall be waived in its entirety for the following:*

- (1) A federal, state, or local government, or public entity, that holds a permit to discharge stormwater from a municipal separate storm sewer system; except that the waiver of charges shall apply only to property covered by any such permit;*
- (2) Public roads and street rights-of-way that are owned and maintained by state or local agencies including property rights-of-way acquired through the acquisitions process;and*
- (3) Cemeteries.*

*(f) In the event that a stormwater utility bill is issued in error and a refund is necessary, no refund or proration shall be issued for any period less than one (1) month.*

***Sec. 18-704. Stormwater utility fee calculation.***

*Adequate revenues shall be generated to provide for a balanced operating and capital improvement budget for expansion and maintenance of the stormwater management system, as well as compliance with regulatory requirements by setting sufficient levels of stormwater utility fees. Income from stormwater utility fees shall not exceed the costs incurred in providing the services and facilities described in this article. These fees shall be billed to owners of all property in the town subject to the stormwater utility fee; provided, however, where a tenant or occupant is the person to whom water or sewer service, or both, are billed, the utility fees may be billed to such tenant or occupant.*

*(a) For purposes of determining the stormwater utility fee, all properties in the town are classified into one of the following classes:*

- (1) Developed residential property;*
- (2) Developed multifamily residential property;*
- (3) Developed nonresidential property;*
- (4) Undeveloped property; or*
- (5) Agricultural property.*

*(b) The monthly stormwater utility fee for developed residential property shall equal the SBU rate. However, where more than one (1) residence or dwelling unit is located on a single lot or parcel the owner of the lot or parcel shall be charged a stormwater utility fee that is equal to the SBU rate multiplied by the number of residences or dwelling units (up to four) located on the lot or parcel.*

*(c) The monthly stormwater utility fee for developed multifamily residential property shall be the SBU rate multiplied by the numerical factor obtained by dividing the total impervious surface area of a developed multifamily residential property by one (1) SBU, as set forth in the tiered rate structure shown in subsection (h). The minimum charge for any developed multifamily property shall equal the SBU rate.*

*(d) The monthly stormwater utility fee for developed nonresidential property shall be the SBU rate multiplied by the numerical factor obtained by dividing the total impervious surface area of a developed nonresidential property by one (1) SBU, as set forth in the tiered rate structure shown in subsection (h). The minimum charge for any developed nonresidential property shall equal the SBU rate.*

*(e) The stormwater utility fee for vacant developed property, both residential and nonresidential, shall be the same as that for occupied property of the same class.*

*(f) Undeveloped property shall be exempt from the stormwater utility fee; provided, however, that any impervious areas on the property greater than 300 square feet shall be subject to the monthly stormwater utility fee for developed nonresidential property, as set forth above in subsection (d).*

(g) *Agricultural property shall be exempt from the stormwater utility fee; provided, however, that (i) each developed residential unit situated on a parcel devoted to agricultural use shall be charged a stormwater utility fee equal to the SBU rate and (ii) other impervious areas on the property greater than 300 square feet shall be subject to the monthly stormwater utility fee for developed nonresidential property, as set forth above in subsection (d).*

(h) *Tiered Rates*

<u>Square feet of impervious surface area</u>				<u>Monthly Stormwater Utility Fee</u>
0	to	300		\$0.00
301	to	6,800		\$6.00
6,801	to	10,000		\$12.36
10,001	to	20,000		\$18.18
20,001	to	30,000		\$36.36
30,001	to	40,000		\$54.55
40,001	to	50,000		\$72.73
50,001	to	60,000		\$90.91
60,001	to	70,000		\$109.09
70,001	to	80,000		\$127.27
80,001	to	90,000		\$145.45
90,001	to	100,000		\$163.64
100,001	to	200,000		\$181.82
200,001	to	300,000		\$363.64
300,001	to	400,000		\$545.45
400,001	to	500,000		\$727.27
500,001	to	600,000		\$909.09
600,001	to	750,000		\$1,090.91
750,001	to	1,000,000		\$1,363.64
Greater than		1,000,001		\$1,818.18

***Sec. 18-705. Stormwater utility fee credits and exemptions.***

(a) *The town council shall adopt by resolution a system of credits in accordance with Virginia Code § 15.2-2114 (D) that will provide for full or partial waivers of stormwater utility fees for any persons who install, operate, and maintain a stormwater management facility that achieves a permanent reduction in stormwater flow or pollutant loadings. However, to be eligible for a credit, the property must have an SBU greater than one (1). The amount of the waiver shall be based in part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation to post-installation of the facility. The system of credits may also, in accordance with Virginia Code § 15.2-2114 (E), provide for full or partial waivers of stormwater utility fees for public or private entities that implement or participate in strategies,*

*techniques, or programs that reduce stormwater flow or pollutant loadings, or decrease the cost of maintaining or operating the public stormwater management system.*

*(b) The department of engineering and GIS will develop written policies, to be approved by the town council, to implement the system of credits. A copy of the approved policies shall be on file with the department of engineering and GIS. Nothing shall prevent the town council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits. Credits shall not be issued retroactively.*

*(c) Except for new construction, applications for credits shall be made each year by January 1, with any approved credit to be effective on the following July 1. Applications for credits received after January 1 will be accepted but not reviewed until the following year.*

***Sec. 18-706. Stormwater management enterprise fund.***

*(a) The stormwater management enterprise fund is hereby established as a dedicated enterprise fund. The fund shall consist of revenues generated by stormwater utility fees, as well as all other revenues as defined in section 18-702.*

*(b) The stormwater management enterprise fund shall be dedicated special revenue used only to pay for or recover costs for the following:*

- (1) The acquisition, as permitted by Virginia Code § 15.2-1800, of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater control facilities;*
- (2) The cost of administration of the stormwater management program;*
- (3) Planning, design, engineering, construction, and debt retirement for new facilities and enlargement or improvement of existing facilities, whether publicly or privately owned, that serve to control stormwater;*
- (4) Operation and maintenance of facilities that serve to control stormwater;*
- (5) Monitoring of stormwater control devices and ambient water quality; and*
- (6) Other activities consistent with the state or federal regulations or permits governing stormwater management, including, but not limited to, public education, watershed planning, inspection and enforcement activities, and pollution prevention planning and implementation.*

***Sec. 18-707. Billing, enforcement, and interest.***

*(a) The stormwater utility fee is to be paid by the owner of each lot or parcel subject to the utility fees. However, where a tenant or occupant is the person to whom water or sewer service, or both, are billed, the stormwater utility fee may be charged to such tenant or occupant. In any case in which a tenant or occupant fails to pay the utility fee, the delinquent utility fee shall be collected from the owner of the property. All properties subject to the utility fee shall be issued bills or statements for stormwater utility fees. As permitted by Virginia Code § 15.2-2114 (G), such bills or statements may be combined with sewer and water bills levied pursuant to Chapters 18 and 24, provided that all charges shall be separately stated. The combined bill*

*shall be issued for one (1) total amount. The director of finance is hereby authorized and directed to create policies and procedures for the efficient billing and collection of the combined bill, including a policy for allocating payments to the separate charges stated on the combined bill. The bills or statements shall include a date by which payment shall be due. All bills for stormwater utility fees prescribed by this article shall be due and payable twenty (20) days from the date of the bill and shall be deemed delinquent if not paid in full within such time.*

*(b) Delinquent stormwater utility fees, in accordance with Virginia Code § 15.2-105, shall be subject to a penalty thereon of ten dollars (\$10.00) or an amount not exceeding ten (10) percent of the amount then due, which penalty shall be added to the amount due from such person. No penalty shall be imposed if such failure was not in any way the fault of the customer. Fault shall be determined by the director of finance, who may consider affidavits or other evidence. Interest at the rate of ten (10) percent per year on the balance of the account shall be imposed and collected on all such delinquent fees from the date after the expiration of twenty (20) days after the date of billing.*

*(c) A delinquent stormwater utility fee, along with penalty and interest, shall constitute a lien on the property ranking on a parity with liens for unpaid taxes and shall be collected in the same manner as provided for the collection of unpaid taxes or otherwise permitted by law.*

#### ***Sec. 18-708. Petitions for adjustments.***

*(a) Any property owner may request an adjustment of a stormwater utility bill by submitting a request in writing to the director of engineering and GIS within sixty (60) days after the date the bill is mailed or issued to the property owner. Grounds for adjustment of stormwater utility fees are limited to the following:*

- (1) An error was made regarding the square footage of the impervious area of the property;*
- (2) The property is exempt under the provisions of section 18-703 (e);*
- (3) There is a mathematical error in calculating the stormwater utility fee;*
- (4) The identification of the property owner invoiced is in error; or*
- (5) An approved credit was incorrectly applied.*

*(b) The property owner shall complete a stormwater utility fee adjustment application form available on the town's website or supplied by the director.*

*(c) If the application alleges an error in the amount of the impervious area, a plan view of the property's impervious area will be provided by the town depicting all impervious areas within the property boundaries, including buildings, patios, driveways, walkways, parking areas, compacted gravel areas, and any other separate impervious structures identified in the town's impervious area database. This assessment will be the town's initial response to the request for adjustment.*

- (d) *If the applicant is not satisfied with this initial response, the applicant may:*
- (1) *Request a meeting with the director; and/or,*
  - (2) *Submit an appeal with a revised plan signed and sealed by a professional engineer or professional land surveyor licensed in the Commonwealth of Virginia attesting to the accuracy of the impervious area measurements.*

(e) *The requirement for a plan view of the property's impervious area required in subsection (c) above may be waived by the director, if at the sole discretion of the director the error is obvious and is the result of a technical error or oversight by the town. In such case, the town shall be responsible for recalculating the impervious area of the property.*

(f) *The director shall make a determination within forty-five (45) days of receipt of a complete submittal for the request for adjustment. In the event that the director finds that the appeal is deficient or incomplete, the director shall offer the owner sixty (60) days to supply the missing information. The forty-five-day time for a decision will begin at such time as the requested information is provided. If the information requested is not provided to the director within sixty (60) days of the original request, the petition will be deemed withdrawn.*

(g) *The director's decision on a stormwater utility fee adjustment petition is a final decision from which an aggrieved party may appeal to the Montgomery County Circuit Court.*

***Sec. 18-709. Severability.***

*The provisions of this article shall be deemed severable; and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remaining portions of this article shall remain in full force and effect and their validity unimpaired.*

2. That this ordinance shall be effective January 1, 2015.

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Mayor

ATTEST:

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Town Clerk

1<sup>st</sup> Reading: \_\_\_\_\_

2<sup>nd</sup> Reading & Adoption: \_\_\_\_\_

APPROVED AS TO CONTENT:

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Engineering & GIS

APPROVED AS TO LEGAL SUFFICIENCY:

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Town Attorney